

Exhibit No. 4

Case No. 22-cv-00384-JSR

Declaration of Rhett O. Millsaps II In Support Of Rothschild's
Opposition To Plaintiffs' Motion For Summary Judgment

August 29, 2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X

HERMES INTERNATIONAL and HERMES OF
PARIS, INC.,

PLAINTIFFS,

-against-

Case No.:
22-cv-00384
(JSR)

MASON ROTHSCHILD,

DEFENDANT.

-----X

DATE: August 29, 2022
TIME: 8:30 A.M.

- CONFIDENTIAL -

REMOTE DEPOSITION of SCOTT DUKE
KOMINERS, Ph.D., taken by the Defendant,
pursuant to a notice and to the Federal
Rules of Civil Procedure, held remotely via
Zoom Videoconference, before Suzanne
Pastor, a Notary Public of the State of New
York.

August 29, 2022

1 Q. I'm just asking, is the title
2 "Bored Ape Yacht Club" an apt title for the
3 images associated with the Bored Ape Yacht
4 Club NFTs?

5 MS. WILCOX: Objection.

6 A. So the Bored Ape Yacht Club is
7 not the title for the image associated to
8 the NFTs. It's the title for the NFTs that
9 are associated to those images.

10 Q. Is it an apt title for those
11 NFTs?

12 MS. WILCOX: Objection.

13 A. I guess the market has -- the
14 marketing community has deemed it so.

15 Q. Do the images associated with
16 Bored Ape Yacht Club NFTs depict apes?

17 A. They depict cartoon apes, yes.

18 Q. Do the images associated with
19 the MetaBirkins NFTs depict Birkins?

20 A. No.

21 Q. What do they depict?

22 A. As I said, they depict
23 fuzzified bags that look similar to
24 Birkins.

25 Q. And so then would the title of

August 29, 2022

1 Q. Art in the context as you
2 understand it to be used in the NFT market.

3 A. Got it. Yes. Digital brand
4 NFTs often view art as imagery,
5 collectibles or other sort of digital
6 assets as a springboard off of which they
7 can build their community and associated
8 digital brand.

9 Q. Are the art-only and digital
10 brand categories of submarkets something
11 that you've invented for your expert report
12 in this case?

13 A. No.

14 Q. Have you written about this
15 anywhere else?

16 A. Can you clarify what you mean
17 "have you written about this"?

18 Q. Have you written about the
19 art-only and digital brand NFT submarket
20 categories in any published papers?

21 A. I've written several works on
22 the digital -- the contribution of
23 digital -- of NFTs to digital brand
24 building. In that context we also mention
25 that some NFTs do not aspire to that and

August 29, 2022

1 sort of convey an ownership of some other
2 asset.

3 Q. What publications are those in
4 which you've written about this?

5 A. The one I recall in particular
6 is the Harvard Business Review article on
7 NFTs. I believe.

8 Q. What was -- when was that
9 published?

10 A. November 2021 I believe.

11 Q. What's the title of that
12 article?

13 A. "How NFTs Create Value."

14 Q. In that paper you
15 differentiated between art-only NFTs and
16 digital brand NFTs?

17 A. We didn't specifically
18 differentiate the submarkets because the
19 paper wasn't concerned with the submarket
20 analysis.

21 Q. So in your report in this case,
22 is this the first time that you have
23 specifically differentiated between these
24 submarkets?

25 A. I don't know about the exact

August 29, 2022

1 timing, but Steve Kozinski and I have been
2 working on a book in which we also make
3 these sorts of distinctions.

4 Q. When did you begin working on
5 that book?

6 A. I don't remember precisely.

7 Q. By the way, how did you get
8 connected with Hermes and their lawyers for
9 this case?

10 A. Rubin Anders reached out.

11 Q. Who is Rubin Andrews?

12 A. Anders, sorry, A-N-D-E-R-S.

13 Q. Who is Rubin Anders?

14 A. I don't know very much about
15 them. My impression is that they're an
16 expert search and recruitment firm.

17 Q. What did they tell you when
18 they reached out?

19 A. Very little.

20 Q. Okay, what was that, the "very
21 little" that they told you?

22 A. I don't remember precisely. I
23 believe they just -- but to the best of my
24 recollection, I think they just asked if I
25 were potentially interested in being an

August 29, 2022

1 directly from contract, which means they
2 would not have had to -- assuming that is
3 correct, they would not have had to pay or
4 undertake any additional actions from
5 holding a MetaBirkin to gain access to the
6 event.

7 Q. But still, if the event was
8 only open to I Like You, You're Weird NFTs,
9 then people who are MetaBirkins holders
10 could not get in through their MetaBirkin
11 NFT, they would have to gain access through
12 their I Like You, You're Weird NFT,
13 according to what you're saying. Am I
14 following that?

15 A. That is -- so yes, that is the
16 chain of effect. But MetaBirkins holders,
17 or at least some MetaBirkin holders
18 automatically had access to I Like You,
19 You're Weird NFTs, which means that through
20 the evolution of the utility of the
21 MetaBirkins, they would have gained access
22 to the event by virtue of having received
23 and then held these other tokens.

24 Q. Is there any merchandise
25 associated with MetaBirkins?

August 29, 2022

1 A. Am I right to assume you mean
2 merchandise -- like physical merchandise?

3 Q. Yes.

4 A. It is not -- I am not aware of
5 any at present.

6 Q. Is there any digital
7 merchandise associated with MetaBirkins?

8 A. So there was -- Rothschild
9 indicated plans to introduce an airdrop of
10 another NFT which might be considered
11 digital merchandise. Again, it's a little
12 hard to know precisely how the MetaBirkins
13 project would have evolved because
14 Rothschild, to my knowledge, stopped
15 actively developing for it. But all of
16 these are things he could have done. But
17 I'm not aware that he introduced those
18 individual assets at this time.

19 Q. Does MetaBirkins have any
20 related NFT projects?

21 A. Just to make sure, what do you
22 mean by "related"?

23 Q. What does the word "related"
24 mean to you?

25 A. So as I described in my report,

August 29, 2022

1 likely causal.

2 Q. I mean a causal mechanism --

3 A. Okay.

4 Q. -- claim.

5 A. In that sense, then yes, I am
6 saying the Hermes Association is the most
7 likely causal explanation for the extent to
8 which MetaBirkins prices are outside the
9 empirical range. The rest of that clause,
10 given my analysis.

11 Q. What is the basis for that
12 causal claim?

13 A. The lack of evidence of other
14 features that seemed likely to map into
15 that same value layer.

16 Q. Were you able to rule out that
17 people simply found the images to be
18 compelling artworks that were associated
19 with the NFTs?

20 A. Again, as I said, the analysis
21 doesn't explicitly rule out any individual
22 sources value but it places a weight in
23 what those values would have to be. And
24 the analysis suggests that the value that
25 people would have to place on the specific

August 29, 2022

1 images associated to the MetaBirkins NFTs
2 were about to be the primary mechanism
3 driving the value, would have to be very,
4 very large and larger than the vast
5 majority of other projects at that time.
6 And on par with several extremely major
7 well established functions.

8 Q. Did you take into account what
9 people are currently paying for artwork on
10 the global art market?

11 MS. WILCOX: Objection.

12 A. I'm not even sure what the
13 scope -- context of that question is. In
14 the global art market, do you refer to
15 local galleries, large scale art dealers?
16 What are you asking?

17 Q. I'm asking did you do any
18 research whatsoever into what people are
19 paying for art outside of the NFT context?

20 A. And by "art" in this context do
21 you mean imagery like the term -- the way
22 as it's used in the context of the NFT
23 market, or do you mean the established art
24 market like the gallery system and so
25 forth?

August 29, 2022

1 Q. I mean just the art market,
2 outside of the NFT world. Again, let me
3 restate the question because it's very
4 straightforward.

5 Did you do any research
6 whatsoever into what people are paying for
7 art outside of the world of NFTs?

8 MS. WILCOX: Objection.

9 Q. It's just a yes or no. In your
10 analysis here did you do any research into
11 that?

12 A. For this empirical analysis
13 I -- I certainly have read some things
14 about the broader art market in context.
15 But for this analysis, let me think. I
16 guess we did to some degree consider it but
17 couldn't figure out a way to do it that
18 would be robust.

19 Q. How did you consider it since
20 you haven't been able to define art in any
21 other question I've asked you today?

22 A. Well, as I said --

23 MS. WILCOX: Objection.

24 A. As I said, I was assuming the
25 interpretation that you had used earlier

August 29, 2022

1 would be art market. So it has the broader
2 gallery system and so forth. And that's
3 part of the --

4 Q. So what did you look at -- you
5 said you did consider it but you ultimately
6 didn't really include it in your analysis.
7 What did you look at exactly?

8 A. Sorry. We thought about
9 whether it might be possible to do such an
10 empirical study.

11 Q. I see, and then you did not.

12 A. Correct.

13 Q. Earlier we looked at Andy
14 Warhol's Campbell's Soup Cans paintings.
15 Would you agree that the power of that
16 artwork, the reason it's had so much
17 recognition in society is tied to the use
18 of the iconic Campbell's Soup brand?

19 MS. WILCOX: Objection.

20 A. Yeah, so there's a stipulation
21 there that it's been iconic in society. So
22 I assume you're stipulating that it's been
23 iconic in society. I don't really know the
24 history.

25 Q. Do you understand that -- are

August 29, 2022

C E R T I F I C A T E

STATE OF NEW YORK)
 : SS.:
COUNTY OF DELAWARE)

I, SUZANNE PASTOR, a Notary Public
for and within the State of New York, do
hereby certify:

That the witness whose examination is
hereinbefore set forth was duly sworn and
that such examination is a true record of
the testimony given by that witness.

I further certify that I am not
related to any of the parties to this
action by blood or by marriage and that I
am in no way interested in the outcome of
this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this day, September 8, 2022.



SUZANNE PASTOR